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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 JON MILLER, et al.,

11 Plaintiffs,

12 v.

13 MEDIA SERVICES ACQUISITION  
14 CORP., et al.,

15 Defendants.

CASE NO. C09-1425JLR

ORDER GRANTING MOTION  
TO DISMISS

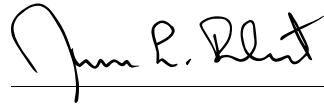
16 This matter comes before the court on Plaintiff Tim Fujita-Yuhas's motion to  
17 dismiss without prejudice his claims against Defendants Adam Cohen and Jennifer Sultan  
18 (Dkt. # 93). No party has filed an opposition to Mr. Fujita-Yuhas's motion. Having  
19 considered Mr. Fujita-Yuhas's motion, the balance of the record, and the governing law,  
20 the court GRANTS Mr. Fujita-Yuhas's motion to dismiss (Dkt. # 93).

21 Federal Rule of Civil Procedure 41(a)(2) provides that, after the opposing party  
22 has served either an answer or a motion for summary judgment, "an action may be

1 dismissed at the plaintiff's request only by court order, on terms that the court considers  
2 proper." Fed. R. Civ. P. 41(a)(2). "A district court should grant a motion for voluntary  
3 dismissal under Rule 41(a)(2) unless a defendant can show that it will suffer some plain  
4 legal prejudice as a result." *Smith v. Lenches*, 263 F.3d 972, 975 (9th Cir. 2001). The  
5 dismissal of claims against a debtor does not violate the automatic bankruptcy stay  
6 because it does not constitute a "continuation" of a judicial proceeding against a debtor  
7 under 11 U.S.C. § 362(a). *O'Donnell v. Vencor Inc.*, 466 F.3d 1104, 1110 (9th Cir.  
8 2006). Dismissals pursuant to Rule 41(a)(2) are without prejudice unless the order states  
9 otherwise. Fed. R. Civ. P. 41(a)(2).

10 Here, no party has opposed Mr. Fujita-Yuhas's motion, and the court has  
11 identified no plain legal prejudice that would result from Mr. Fujita-Yuhas's dismissal of  
12 his claims against Mr. Cohen and Ms. Sultan. In light of the Ninth Circuit's recognition  
13 that a dismissal does not violate the automatic stay provision of 11 U.S.C. § 362(a), *see*  
14 *O'Donnell*, 466 F.3d at 1110, the court GRANTS Mr. Fujita-Yuhas's motion to dismiss  
15 without prejudice his claims against Mr. Cohen and Ms. Sultan (Dkt. # 93).

16 Dated this 10th day of June, 2011.

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19 JAMES L. ROBERT  
20 United States District Judge  
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